

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3784 of 1996

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SPECIAL CIVIL APPLICATION No 4740 of 1996

For Approval and Signature:

Honourable MR. JUSTICE S.D. SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
  2. To be referred to the Reporter or not?
  3. Whether Their Lordships wish to see the fair copy of the judgement?
  4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
  5. Whether it is to be circulated to the Civil Judge?

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DHARI GRAM PANCHAYAT

Versus

MAKWANA BHARATBHAI RAVJIBHAI

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Appearance in Spl.C.A. No. 3784 of 1996

MR PJ KANABAR for Petitioner

MR HK RATHOD for Respondent No. 1

Appearance in Spl.C.A. No. 4740 of 1996

MR. HK RATHOD for petitioner

MR PJ KANABAR for Respondent No.1

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CORAM : MR.JUSTICE S.D.SHAH

Date of decision: 09/07/96

ORAL COMMON JUDGEMENT

1. Rule in each petition. Mr. H.K.Rathod waives

service of rule on behalf of respondents in the first petition and Mr. P.J. Kanabar waives service of rule on behalf of respondent in the second petition. With the consent of the learned advocates appearing for the parties, the matters are finally heard today.

2. These two petitions are directed against the judgment and award of the Labour Court dated 22nd January, 1996, whereby in Reference 669 of 1993, the Labour Court has ordered reinstatement of nine daily rated employees as daily rated employees with continuity of service without back wages. Dhari Nagar Gram Panchayat, the employer is aggrieved by this award mainly on the ground that no opportunity is provided to the panchayat to defend its case and that when an application for adjournment was given, the same was dismissed and the evidence of the panchayat was closed. Even subsequent request to permit the panchayat to lead evidence was not acceded to and therefore it is submitted that rules of natural justice are denied and panchayat is denied the opportunity of defending a just case.

3. The nine workers are aggrieved by the award in the second petition inasmuch as they are denied back wages for the entire period. But, they are mainly aggrieved on the ground that the Labour Court has recorded factually a perverse and wrong finding that in fact nine workmen have never claimed back wages and that therefore they are not entitled to the back wages. It is submitted before the court that starting from the submission of the statement of claim as well as deposition of witness as well as in the written submission, the nine workmen have consistently claimed back wages and the Labour Court was not justified in recording a finding which was inconsistent with the record before the Labour Court.

4. This case has little chequered history inasmuch as the employees who were working as daily rated employees were dragged upto the Supreme Court in the litigation. The order which the Division Bench of the Supreme Court passed on 11th of March, 1992 in Spl. Leave to Appeal (Civil Appeal No. 3266 of 1992) is reproduced hereunder:

"THE PETITION FOR SPECIAL LEAVE TO APPEAL ALONG  
WITH THE APPLICATION FOR INTERIM RELIEF above  
mentioned being called on for hearing before this  
Court on the 11th day of March, 1992, UPON

hearing counsel for the petitioners herein, THIS COURT while observing that if the workmen concerned apply for employment in the post concerned, they may be considered in accordance with the recruitment rules and the filing of the application in the Labour Court should not be taken as a factor against them, dismissed the Special Leave Petition.

Consequent upon the dismissal of the aforesaid Special Leave Petition this Court's Order dated 26th February, 1992 passed in the above matter be and is hereby vacated save as aforesaid;

AND THIS COURT DOTH FURTHER ORDER that this ORDER be punctually observed and carried into execution by all concerned.

WITNESS the Hon'ble Shri Madhukar Hiralal Kania,  
Chief Justice of India at the Supreme Court, New Delhi, dated this the 11th day of March, 1992."

5. From the aforesaid writ of the Order of the Supreme Court it becomes abundantly clear that the daily rated employees were permitted to apply to the Panchayat for being employed in any alternative employment or in the concerned post and that their cases should be considered in accordance with the Recruitment Rules. It is also observed by the Supreme Court that if the Reference is filed by such daily rated employees in the Labour Court, filing of Reference by them, shall not be taken as a factor adverse to them while considering their application for absorption. It would undoubtedly mean that the Supreme Court never wanted to put an end to the Reference which were pending in the Labour Court against illegal discharge or termination of services of the respondent workmen. The workmen have now succeeded before the Labour Court in at least getting a relief of reinstatement as daily rated workers.

6. Mr. P.J. Kanabar, learned Counsel appearing for the Panchayat has however submitted that in fact the Panchayat was ready and willing to produce its evidence and to examine its witness, but such opportunity was denied to the Panchayat. Even if such submission is accepted as true, this Court does not see any reason as to why these nine daily rated employees who have been out of employment since last more than six years should be subjected to the continuous miseries of unemployment and joblessness because the Panchayat has failed to appear and lead evidence on the date on which it was required to

lead evidence. If rules of natural justice are to be complied with, the Court shall have to look to the helpless and destitute condition of these nine employees who have been endlessly fighting the litigation upto the Apex Court and once again upto this Court in this proceeding. It is in this situation that even if the submission of Panchayat is accepted that they ought to have been permitted to lead evidence and the award of the Labour Court should be quashed and set aside on that ground alone, it can always be subject to the condition that the workmen are reinstated in service till the appropriate award is passed by the Labour Court. The continuance of the reinstatement of the workmen shall not be treated as a factor in favour of the workmen by the Labour Court and the Labour Court shall decide the Reference in accordance with law without being prejudiced by the fact that the nine workmen are at present ordered to be reinstated. In fact, the learned Single Judge M.R. Calla, J. of this Court (reported in 1996 (2) GLR 137) has in identical situation adopted the same approach which would uphold the rules of natural justice and which would mitigate the untold hardship of the workmen who have been systematically kept out of employment over a long number of years.

6. The finding reached by the Labour Court that in fact the employees have not claimed back wages is not borne out from the record. Such finding being contrary to record is quashed and set aside. The Labour Court shall record a fresh finding after complete evidence is led and perused by it.

7. In the result, Special Civil Application No. 3784 of 1996 is partially allowed by quashing and setting aside the award of the Labour Court, Bhavnagar in Reference No. 669 of 1993 dated 27th January, 1996 subject to the condition that nine workmen shall be reinstated as daily rated workmen by Panchayat w.e.f. 15th of July, 1996 till the Reference is decided by the Labour Court.

8. The Special Civil Application No. 4740 of 1996 is also allowed and the findings reached by the Labour Court, Bhavnagar that the workmen have not at all claimed back wages is hereby quashed and set aside. The Reference No. 669 of 1993 is remanded back to the Labour Court, Bhavnagar for deciding the same in accordance with law after giving opportunity to the Panchayat to lead evidence and Panchayat is directed that such evidence shall be led and completed in any case before 31st of October, 1996. No further time shall be granted by the

Labour Court to any of the parties beyond that date.

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